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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,854	10/25/2001	Edward J. Stern JR.	ST60-001	8668

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EXAMINER
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STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/052,854

Applicant(s)

STERN, EDWARD J.

Examiner

Gregory J. Strimbu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Election/Restrictions***

Applicant's election without traverse of Group III in Paper No. 6 is acknowledged. Accordingly, claims 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lifting receiver being located on the beam (claim 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "[a]n impact protection is described" on line 1 is grammatically awkward and confusing. Additionally, "is described" can be easily implied and therefore should be deleted.

Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claim 1-16 are objected to because the terminology "box members" is not sufficiently descriptive of the elements of the invention to which the term refers. It is suggested that the applicant amend the claims to more accurately recite the structure of the "box members" to avoid confusion and to better define the invention over the prior art. Recitations such as "lift" on line 2 of claim 7 should be changed to --lifting-- to agree with the language set forth above. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "lateral edges" on line 2 of claim 1 render the claims indefinite because it is unclear what element of the invention includes the lateral edges the applicant is referring to. Recitations such as "supportable in channels . . . on a

surface adjacent the door” on lines 4-5 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Is the elongated beam supportable in channels, supportable in box members and supportable on a surface? Recitations such as “arranged to releasably interfit” on lines 5-6 of claim 1 render the claims indefinite because it is unclear what element(s) of the invention the applicant is referring to. Recitations such as “a closed position” on line 6 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the closed position set forth above or is attempting to set forth another closed position in addition to the one set forth above. Recitations such as “a wall” on line 2 of claim 2 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of the device or the combination of the device and a wall. The preamble of claim 1 implies the subcombination while the positive recitation of the wall on line 2 of claim 2 implies the combination. Recitations such as “a channel for each beam end” on line 3 of claim 3 render the claims indefinite because it is unclear if the applicant is setting forth one or two channels. Recitations such as “a rectangular box end member” on line 2 of claim 7 render the claims indefinite because it is unclear if the applicant is referring to the box member set forth above or is attempting to set forth another box member in addition to the one set forth above. Recitations such as “the protecting beam” on line 1 of claim 9 render the claims indefinite because they lack antecedent basis. Recitations such as “means latching said rod to said beam” on line 9 of claim 11 render the claims indefinite because it is unclear whether or not the recitation is part of the function of the means.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 3, 6, 7, 9 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Lampers. Lampers discloses a device 12 for impact protection of a overhead door 10 comprising an elongated beam 14 supportable in channels 26 and box members (not numbered, but seen in figure 4 comprising the elements which mount the beam 14 to the channels) on the beam and on a surface (not numbered, but comprising a surface of the box element 28) adjacent the door, arranged to releasably interfit at a closed position of the door and hold the beam in laterally spaced relation to the door, at least one lifting rod 32 and complimentary lifting rod receiver 34, one of which being mounted on the beam and the other adapted to be mounted on the door and arranged to be engaged such that the beam is carried responsive by the overhead door between the open and closed positions thereof and such that the lifting rod and lifting rod receiver are operably disengaged at the closed position to permit movement of the beam relative to the door, a safety cable 40, a lifting receiver (not numbered, but comprising one of the openings in the bracket 30 as shown in figure 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampers as applied to claims 1, 3, 6, 7, 9 and 10 above, and further in view of Plfeger. Plfeger discloses a pair of opposed wall stops 21.

It would have been obvious to one of ordinary skill in the art to provide Lampers, with wall stops, as taught by Plfeger, to more accurately position the beam with respect to the door.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampers as applied to claims 1, 3, 6, 7, 9 and 10 above, and further in view of Messner. Messner discloses a device 12 mounted to an overhead door 22 wherein the device has a plastic construction.

It would have been obvious to one of ordinary skill in the art to provide Lampers with a plastic construction, as taught by Messner, to reduce the weight of and cost of the protecting beam.

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampers as applied to claims 1, 3, 6, 7, 9 and 10 above, and further in view of Kalus. Kalus discloses a lift rod 12 comprising a hook end 14 for latching engagement.

It would have been obvious to one of ordinary skill in the art to provide Lampers with a lift rod, as taught by Kalus, to provide a more secure engagement between the beam and the door.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampers in view of Plfeger as applied to claims 2, 4, 11 and 13 above, and further in view of Wagner. Wagner discloses an annunciator means 402.

It would have been obvious to one of ordinary skill in the art to provide Lampers, as modified above, with an annunciator means, as taught by Wagner, to warn people that the beam is being deformed.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampers in view of Plfeger as applied to claims 2, 4, 11 and 13 above, and further in view of Messner. Messner discloses a device 12 mounted to an overhead door 22 wherein the device has a plastic construction.

It would have been obvious to one of ordinary skill in the art to provide Lampers with a plastic construction, as taught by Messner, to reduce the weight of and cost of the protecting beam.



***Allowable Subject Matter***

Claims 14 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach the beam including a front surface that is substantially vertical, an inclined surface that leading angularly from the front surface to an upwardly curved surface that leads to a top surface. See claim 14, lines 1-4.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Eastridge et al. is cited for disclosing a protection device mounted to a garage door. Knoll, Bertilsson et al., Lichy '614 and '027 are cited for disclosing a bump resistant door.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
March 1, 2004